

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<div>IN RE:</div> <div>MIDWEST RENEWABLE ENERGY PROJECTS LLC,</div> <div>Petitioner,</div> <div>v.</div> <div>INTERSTATE POWER AND LIGHT COMPANY,</div> <div>Respondent.</div>	<div>DOCKET NO. AEP-05-1</div>
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ORDER SETTING PROCEDURAL SCHEDULE

(Issued February 7, 2005)

On January 12, 2005, Midwest Renewable Energy Projects LLC (Midwest Renewable) filed with the Utilities Board (Board), pursuant to 199 IAC 15.4 and 15.5, a petition to determine specific rates to be paid by Interstate Power and Light Company (IPL) for purchases of qualifying energy and/or capacity for a certain qualifying small power production facility. The petition also asked that the Board order IPL to purchase such energy and/or capacity from the facility pursuant to a long-term agreement that may, but need not, convey to IPL any emission credits, alternate energy credits, or similar tradable certificates.

As part of its petition, Midwest Renewable requested that the Board issue a decision on an expedited basis no later than March 1, 2005. The Board by order

issued January 21, 2005, denied this request but assigned the docket to its administrative law judge (ALJ) and directed the ALJ to convene a conference among the parties to discuss an expedited procedural schedule that offers sufficient time for necessary discovery and post-hearing briefs. The Board noted in its order that the issues raised by Midwest Renewable's petition are ones of first impression for the Board. The ALJ presided at such a conference on January 25, 2005.

On January 28, 2005, Midwest Renewable filed a motion for procedural order. In that motion, Midwest Renewable asked that: (1) the full Board preside at the reception of evidence and issue a decision; (2) a procedural schedule be set along the lines set forth in the motion, with a hearing on April 5 and 6, 2005; (3) the parties be ordered to serve all pleadings, discovery requests and responses, and other documents on other parties by electronic mail or facsimile transmission as well as regular mail; and (4) the parties be ordered to respond to discovery requests within five days after service. In addition, Midwest Renewable said that if its request that the full Board preside at the reception of evidence is granted, it would welcome the opportunity to participate in non-binding mediation by the ALJ so long as such mediation does not delay the procedural schedule.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response on February 3, 2005. Consumer Advocate indicated it had no objection to the motion.

IPL filed a response to the motion on February 3, 2005. IPL did not object to proceeding to hearing before the Board instead of the ALJ and agreed with Midwest

Renewable that having the Board hear the case would likely produce an earlier final decision. IPL also recognized the need for an aggressive procedural schedule to accommodate a December 31, 2005, in-service date for a new wind project.

IPL did object to some aspects of the procedural schedule proposed by Midwest Renewable. Midwest Renewable's proposed schedule is as follows:

1. IPL initial testimony—February 21, 2005.
2. Midwest Renewable testimony—March 10, 2005.
3. OCA testimony and IPL rebuttal—March 23, 2005.
4. Evidentiary hearing—April 5 and 6, 2005.
5. Post-hearing briefs—April 15, 2005.

IPL did not object to the time period between the deadlines, but asked that the deadline for its initial testimony be moved to March 7, 2005. IPL said the deadline for bids on its recent request for proposals (RFP) for wind power was extended from February 4 to February 11, 2005, at the request of several bidders. IPL stated a bid evaluation would require 10-14 days and that only after this process is complete can IPL prepare its initial testimony because it believes the RFP is likely to produce probative evidence of the avoided cost of wind energy. If IPL's expectations as to the quality of bids are not met, IPL said it would need to prepare a different case with other witnesses and types of evidence. In addition, IPL noted its counsel would be out of state from February 16 to 22, 2005.

As a caveat, IPL said its ability to meet a March 7 deadline is contingent upon the resolution of a confidentiality issue that may prevent IPL from filing testimony before the matter is resolved. IPL will notify the Board if that appears likely.

IPL said it had no objection to the expedited discovery procedures. Finally, IPL said while it had no objection in principle to non-binding mediation efforts such as those proposed by Midwest Renewable, it did object to them in this case because it could undermine the RFP process by allowing other bidders to claim Midwest Renewable was receiving different treatment.

There are no objections to: (1) the Board hearing the case and issuing a final decision, as opposed to the ALJ hearing the case and issuing a proposed decision that could be appealed to the Board; and (2) setting the discovery response time at five days from the date of request and requiring e-mail or facsimile service as well as service by mail. The Board will grant the motion on these uncontested aspects. Because the issues raised in Midwest Renewable's petition are ones of first impression, any ALJ decision would likely be appealed to the Board. By having the Board hear the evidence and issue a final decision, one step in the process will be eliminated.

The Board agrees with IPL that a February 21 date does not allow IPL sufficient time to prepare its testimony if the RFP is to be used as evidence in this case. However, the Board believes that because of the expedited procedural schedule to accommodate Midwest Renewable, evidence may be introduced in IPL's rebuttal that generally would be contained in its initial testimony. The Board will allow

more time for initial testimony, but not the full amount requested. The Board will set February 28, 2005, as the date for IPL's initial testimony. IPL may need to prepare its case on parallel paths so that it will be ready to file regardless of the outcome of the RFP. Under this schedule, the hearing date will remain as requested by Midwest Renewable, April 5, 2005. However, the Board puts the parties on notice that if significant testimony is filed on rebuttal such that the Board or other parties cannot adequately prepare for hearing by April 5, the hearing date could change and the parties should clear April 18, 2005, on their calendars. This is the most likely alternative date, if the hearing must be rescheduled.

At this time, the parties are not in agreement to mediate their dispute before the ALJ. If all the parties subsequently desire mediation, they should contact the Board and the Board will determine if the ALJ's schedule permits her to act as mediator. The parties are of course free to mediate before an outside mediator or pursue other avenues of settlement.

IT IS THEREFORE ORDERED:

1. The following procedural schedule is established:
 - a. IPL shall file prepared direct testimony, with underlying workpapers and exhibits, on or before February 28, 2005. If a party references a data request in its prepared testimony, the data request shall be filed as an exhibit.
 - b. Midwest Renewable shall file its rebuttal testimony, with underlying workpapers and exhibits, on or before March 17, 2005.

c. Consumer Advocate and any intervenor shall file written testimony and IPL shall file rebuttal testimony, on or before March 30, 2005.

d. The parties shall file a joint statement of the issues on or before April 1, 2005.

e. All parties which choose to file a prehearing brief may do so on or before April 1, 2005.

f. A hearing shall be held beginning at 9 a.m. on April 5, 2005, for the purpose of receiving testimony and the cross-examination of all testimony. The hearing shall be held in the Board's Hearing Room, 350 Maple Street, Des Moines, Iowa. The parties shall appear one-half hour prior to the time of the hearing for the purpose of marking exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

g. The parties may file simultaneous initial briefs on or before April 15, 2005.

2. In the absence of objection, all underlying workpapers shall become a part of the evidentiary record of these proceedings at the time the related testimony and exhibits are entered into the record.

3. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination that have not been previously filed shall become a part of the evidentiary record of these proceedings. The party making

reference to the data request shall file an original and six copies of the data request and response with the Board at the earliest possible time.

4. In the absence of objection, when the Board has called for further evidence on any issue and the evidence is filed after the close of the hearing, the evidentiary record will be reopened and the evidence will become part of the record five days after the evidence is filed with the Board. All evidence filed pursuant to this paragraph shall be filed no later than seven days after the close of the hearing in this proceeding.

5. The time to respond to discovery requests is five days and the parties should make arrangements to serve each other, in addition to regular mail, by facsimile or e-mail as set forth in the body of this order.

6. The January 21, 2005, assignment of this case to an administrative law judge is rescinded and the Board will preside at the evidentiary hearing.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 7th day of February, 2005.